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September 25, 2014

**Honorable Joseph Bianco**  
**Alphonse M. D'Amato Federal Courthouse**  
**100 Federal Plaza**  
**Central Islip, NY 11722**

**RE: Levy v. Receivables Performance Management, LLC**  
**CV -11 - 3155**

Honorable Judge Bianco,

I represent the Plaintiff in the above matter. I submit this letter in response to the letter Defendant filed on September 25, 2014, in which Defendant refers to three new cases in which the Court granted a temporary stay of a case under the Telephone Consumer Protection Act (TCPA) in anticipation of a possible declaratory ruling from the Federal Communications Commission.

While there have been at least eleven decisions in the last few months that have denied a request to stay a TCPA case,<sup>1</sup> the Court need not even address the conflicting approach followed by the Courts in the cases defendant cites. That is because, the issue is completely irrelevant to the instant matter. The issue that the Defendants in these cases are suggesting the FCC may rule on, is what constitutes an “automatic telephone dialing system” (“ATDS”) under the TCPA. That is simply not an issue in the above case as the parties have stipulated that the Defendant’s system constitutes an ATDS. Additionally, the Court has already granted the Plaintiff summary judgment regarding his TCPA claims. The only remaining issue relates to damages.

As such, the issue Defendant raises is a complete red herring. There is no justification for a stay in this case.

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<sup>1</sup> These decisions include: *Prater v. Medicredit Inc.*, 2014 U.S. Dist. LEXIS 133603 (E.D. Mo. Sept. 18, 2014); *Hartley-Culp v. Credit Mgmt. Co.*, 2014 U.S. Dist. LEXIS 130308 (M.D. Pa. Sept. 15, 2014); *Espejo v. Santander Consumer USA, Inc.*, 2014 U.S. Dist. LEXIS 120498 (N.D. Ill. Aug. 28, 2014); *Holcombe v. Credit Prot. Ass'n, LP*, 2014 U.S. Dist. LEXIS 122054 (M.D. Ga. Aug. 28, 2014); *Bates v. Dollar Loan Ctr., LLC*, 2014 U.S. Dist. LEXIS 119558 (D. Nev. Aug. 26, 2014); *Morse v. Allied Interstate, LLC*, 2014 U.S. Dist. LEXIS 87940 (M.D. Pa. June 26, 2014); *Murray v. Diversified Consultants, Inc.*, 2014 U.S. Dist. LEXIS 78088 (M.D. Fla. June 9, 2014); *Fail v. Diversified Consultants, Inc.*, 2014 U.S. Dist. LEXIS 78090 (M.D. Fla. June 9, 2014); *Ayers v. Verizon Communs., Inc.*, 2014 U.S. Dist. LEXIS 78089 (M.D. Fla. June 9, 2014); *Fenescey v. Diversified Consultants, Inc.*, 2014 U.S. Dist. LEXIS 77212 (M.D. Pa. June 4, 2014).

Sincerely,

Joseph Mauro